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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 ELFREN SANTIAGO LEFRANC

8 Plaintiff,

9 v.

10 ELKO COUNTRY, et al.,

11 Defendants.
12

Case No. 3:20-cv-00406-RFB-CLB

ORDER

13 This matter comes before the Court on the Ninth Circuit Court of Appeal's Referral Notice.
14 ECF No. 19. The Ninth Circuit refers the matter to the Court for the limited purpose of determining
15 if Plaintiff's *in forma pauperis* status should continue during his appeal or if Plaintiff's appeal is
16 frivolous or is taken in bad faith. Id.

17 "[A]n appeal on a matter of law is frivolous where none of the legal points are arguable on
18 their merits." Neitzke v. Williams, 490 U.S. 319, 325 (1989). Here, the Court dismissed Plaintiff's
19 Complaint with prejudice on the bases that Plaintiff failed to comply with this Court's February 5,
20 2021 and April 12, 2021 Orders instructing Plaintiff to file an amended complaint. Plaintiff's
21 original complaint was dismissed in its entirety due to failure to state a colorable Fourteenth
22 Amendment claims against Defendants. Dismissal of a complaint for failure to state a claim upon
23 which relief can be granted is provided for in Federal Rule of Civil Procedure 12(b)(6). See Morley
24 v. Walker, 175 F.3d 756, 759 (9th Cir. 1999) (Dismissal for failure to state a claim is proper only
25 if it is clear that the plaintiff cannot prove any set of facts in support of the claim that would entitle
26 him or her to relief). The court applies the same standard under § 1915 when reviewing the
27 adequacy of a complaint or an amended complaint of an incarcerated individual submitting a
28 complaint pursuant to 42 U.S.C. §1983.

1 Because Plaintiff failed to state a claim pursuant to 28 U.S.C. § 1915A(a) and failed to file
2 an amended complaint this Court dismissed Plaintiff's complaint with prejudice. Therefore, the
3 deficiencies in Plaintiff's complaint cannot be argued on the merits and this Court finds that the
4 pending appeal is frivolous.

5 **IT IS THEREFORE ORDERED** that Plaintiff's *in forma pauperis* status shall not
6 continue through his appeal as his appeal is frivolous.

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8 **DATED:** July 15, 2021.



10 **RICHARD F. BOULWARE, II**
11 **UNITED STATES DISTRICT JUDGE**